IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA No.68 of 2000.

Reserved on:27.08.2007

Date of Decision:October 01, 2007

Prem Singh ***…Appellant.***

Versus

State of H.P. & Others. ***..Respondents.***

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?[1] No

For the appellant ***: Mr.Raman Sethi, Advocate.***

For the respondents ***: Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G.***

Kuldip Singh, Judge.

This appeal is directed against the judgment dated 6.11.1999 passed by learned District Judge, Sirmaur District at Nahan in Land Ref. Case No.1-L.Ref./4 of 1998 rejecting reference petition of the appellant under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act').

2. The facts, in brief, are that for acquiring the land of the appellant comprised in Khasra No.253/1 measuring 2 Biswas and Khasra No.254 measuring 1.10 Bighas total 1-12 Bighas situate in village Thanoga for construction of Solan – Meenus road the notification under

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[1] ***Whether reporters of Local Papers are allowed to see the Judgment***? Yes

Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was issued by State and it was published in the gazette on 25.4.1995. The Land Acquisition Collector (for short 'Collector') conducted land acquisition proceedings and announced the award on 13.11.1997 awarding Rs.9006/- to the appellant for acquiring the land and Rs.37,868/- on account of interest; total Rs.46,868/- compensation. The appellant was aggrieved against the compensation awarded by the Collector, he filed reference petition under Section 18 of the Act. According to the appellant, the market value of the acquired land at the time of notification under Section 4 of the Act was Rs.1 lac per Bigha. He alleged that 110 *Ban* trees standing on the acquired land were also taken into possession but no compensation was paid to the appellant for the trees. The appellant has asserted that possession of the land was taken in the year 1955-56 and road was construction in the year 1961. The respondents contested the claim of the appellant before the District Judge and denied that possession of the land was taken in the year 1955-56 but submitted that the possession was taken on 10.1.1961 when the road was constructed. It was denied that market value of the acquired land was Rs.1 lac per Bigha or there were 110 *Ban* trees on the acquired land. It was submitted that acquired land was *Banjar Kadim* and market value of such land at the time of notification under Section 4 of the Act was Rs.4329.68 per Bigha. On these grounds, the respondents opposed the claim of the appellant. The learned District Judge dismissed the reference petition, hence, the present appeal by the land owner / appellant.

3. I have heard the learned counsel for the appellant and learned Advocate General for the respondents and gone through the record. The learned counsel for the appellant has submitted that the acquired land is situated in village Thanoga. It has been submitted on behalf of the appellant that market value of land in the adjoining villages Salana and Bhuira was much more than what has been allowed by Collector and upheld by learned District Judge. He has relied sale deeds Ext.P-2 and Ext.P-3 for claiming compensation. He has also submitted that no compensation was paid to the appellant for taking into possession 110 *Ban* trees which were standing on the acquired land. The learned Advocate General supported the impugned judgment and has submitted that the appellant is not entitled to enhancement of compensation.

4. PW-1 Kewal Ram is son and G.P.A. of Prem Singh appellant. He has stated that acquired land is situated in village Thanoga. The possession of the acquired land was taken in the year 1955-56 by Public Works Department. There were *110 Ban* trees on this land having market value of Rs.3 lacs. The village Salana is on one side of village Thanoga and on the other side is village Bhuira. The rate of land in village Salana is Rs.1 ½ lacs per Bigha, he has placed on record Ext.P-2 vide shich Krishan Kumar Thakur has sold 1-15 Bighas land to State of Himachal Pradesh for Rs.2,62,500/-. In village Bhuira rate of land is about Rs.1 lac per Bigha. He has placed on record copy of sale deed Ext.P-3. In cross examination, he has stated that he has not any record of trees which were standing on the acquired land. The land sold vide sale deed Ext.P-2 is right on the road.

5. PW-2 Randeep Singh, Registration clerk, stated that he has brought the summoned record and he proved sale deeds Ext.P-2 and Ext.P-3. PW-3 Krishan Kumar has stated that he is resident of village Salana and village Thanoga is adjacent to village Salana. He sold land measuring 1-15 Bighas to State of Himachal Pradesh for a consideration of Rs.2,62,500/- vide sale deed Ext.P-2 on 15.10.1997. PW-4 Surat Singh has stated that he has purchased 2 Bighas land in the year 1987 for Rs.40,000/- from Mohar Singh vide sale deed Ext.P-3. The boundaries of village Thanoga and village Bhuira touch each other. RW-1 Shankar Dass, Naib Tehsildar Land Acquisition, PWD, has stated that as per record average value of acquired land is Rs.4329/- per Bigha. The acquired land is at a distance of 6 Kilometers from Rajgarh. The acquired land is *Banjar Kadim.*

6. The sale deed Ext.P-2 was executed by Krishan Kumar for land measuring 1-15 Bighas in favour of State of Himachal Pradesh on 15.10.1997 for a consideration of Rs.2,62,500/-. The notification under Section 4 of the act was published in gazette on 6.5.1995. The sale deed Ext.P-2 has been executed about 2 ½ years after the publication of notification under Section 4 of the Act. There is no evidence regarding the comparability of acquired land with the land covered by sale deed Ext.P-2, therefore, the sale deed Ext.P-2 cannot be relied for assessing the market value of the acquired land.

7. The sale deed Ext.P-3 was executed on 1.9.1987 for selling land measuring 2 Bighas situated in village Bhuira for Rs.40,000/- or say Rs.20,000/- per Bigha. PW-1 Kewal Ram has stated that village Thanoga and village Bhuira are adjacent villages. PW-4 vendee of sale

deed Ext.P-3 has proved the sale transaction covered by sale deed Ext.P-3. He has also stated that boundaries of village Thanoga and Bhuira touch each other. The sale deed Ext.P-3 was executed more than 8 years before the publication of notification under Section 4 of the Act for acquiring the land in question, nothing has been placed on record to discredit sale deed Ext.P-3. The sale deed Ext.P-3 is a genuine sale transaction. Therefore, sale transaction vide sale deed Ext.P-3 can be relied for assessing the market value of the acquired land. The respondents have placed on record mutation of sale No.312 Mark-A, mutation of sale No.313 Mark-B and mutation of sale No.315 Mark-C of Mauza Thanoga. These mutations are of no help to the respondents inasmuch as sale deeds, vendors and vendees of the sale deeds on the basis of which mutations Mark-A, Mark-B and Mark-C were attested were not produced or examined. Therefore, mutations Mark-A, Mark-B and Mark-C cannot be relied for assessing the market value of the acquired land.

8. It has been submitted that sale transaction vide sale deed Ext.P-3 is not of the same village where the acquired land is situated and, therefore, sale transaction vide sale deed Ext.P-3 for this reason also cannot be relied for assessing the market value of the acquired land. The sale deed Ext.P-3 is of land situated in village Bhuira whereas the acquired land is situated in village Thanoga. It has come in evidence that village Bhuira and village Thanoga are adjoining villages. The respondents have not placed any worth believing sale transaction prior to 25.4.1995 of village Thanoga or village Bhuira whereas appellant has placed on record Ext.P-3 dated 1.9.1987 which is of land situated in

village Bhuira. In absence of sale transaction of village Thanoga prior to 25.4.1995 the date of notification under Section 4 of the Act, the sale deed Ext.P-3 of village Bhuira which is adjoining village of Thanoga can be safely relied for assessing the market value of the acquired land. It has already been noticed above that sale deed Ext.P-3 is a genuine sale transaction and, therefore, can be relied for assessing the market value of the acquired land. In sale deed Ext.P-3 rate of land has been shown Rs.20,000/- per Bigha. The acquired land is 1-12 Bighas and, therefore, market value of acquired land comes to Rs.32,000/- on the basis of rate of land recorded in sale deed Ext.P-3, hence, market value of the acquired land is assessed Rs.32,000/-. The appellant is entitled to amount at the rate 12% per annum on Rs.32,000/- under Section 23(1-A) with effect from 25.4.1995 date of notification under Section 4 of the Act to 13.11.1997 date of award. The appellant is also entitled to 30% solatium under Section 23(2) on the market value assessed. The appellant is also entitled to interest on the enhanced compensation at the rate of 9% per annum with effect from 25.4.1995 date of notification under Section 4 of the Act to 25.4.1996 and thereafter at the rate of 15% per annum till payment.

9. The appellant has failed to prove that there were 110 *Ban* trees on the acquired land and those trees were also taken into possession. In fact, PW-1 G.P.A. of appellant has stated that he has no record of *Ban* trees with him. The appellant is not entitled to interest from the date of possession. He is entitled to interest, as noticed above.

10. No other point was urged.

11. The result of the above discussion is that the appeal is allowed, judgment dated 6.11.1999 passed by learned District Judge, Sirmaur District at Nahan in Land Ref. Case No.1-L.Ref./4 of 1998 is set aside. An award of Rs.32,000/- is passed in favour of appellant and against the respondents, in addition, the appellant is also held entitled to amount at the rate 12% per annum on Rs.32,000/- under Section 23(1-A) with effect from 25.4.1995 date of notification under Section 4 of the Act to 13.11.1997 date of award of Collector, 30% solatium under Section 23(2) on the market value assessed, interest on the enhanced compensation at the rate of 9% per annum with effect from 25.4.1995 date of notification under Section 4 of the Act to 25.4.1996 and thereafter at the rate of 15% per annum till payment. No costs.

October 01, 2007 ***(Kuldip Singh), J.***

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